

NTSB Order No.  
EM-88

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 27th day of July 1981

JOHN B. HAYES, COMMANDANT, United States Coast Guard,

v.

GEORGE W. JAHN, Respondent.

Docket No. ME-87

OPINION AND ORDER

Appellant seeks reversal of the Commandant's decision (Appeal No. 2244) affirming a probationary suspension of his mariner's license (No. 492610) for negligent pilotage of the SS CORNUCOPIA, a 21,668 gross ton tankship. The suspension had been ordered by Administrative Law Judge Charles J. Carroll, Jr. on May 23, 1980, following an evidentiary hearing which concluded on March 14, 1980.<sup>1</sup>

The Coast Guard in this proceeding alleged that appellant had been negligent in failing to properly maintain control of the CORNUCOPIA during a December 8, 1979 San Francisco-Stockton, California trip because the vessel collided with a navigation beacon and then grounded on a mud shoal. On appeal, appellant contends, for various reasons, that the charge of negligence was not proved by a preponderance of the substantial, reliable and probative evidence. The Coast Guard has filed a brief opposing the appeal. Based on our review of the record and the parties' briefs, we have concluded that the Coast Guard did not carry its burden of proof in this proceeding.

The record discloses that appellant's vessel suddenly swerved off course, from roughly the centerline of a 400 ft. wide channel, to the left just before the point where a slight right turn was to be made so that the vessel could be positioned for passage under the Antioch Bridge which crosses the Stockton Deep Water Channel.

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<sup>1</sup>Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

Appellant checked the sheer by order in hard right rudder and by first reducing and then increasing engine speed. However, the vessel continued to slide left and ultimately "contacted and submerged Beacon No. 11" (I.D. at 7) and grounded in the mud along the channel edge. The vessel was easily freed with the aid of a tug.

We have previously recognized the admiralty law doctrine that a ship's collision with a stationary object can support an inference of negligence in the management of the ship which obligates the party who was in charge of the vessel to go forward with evidence to rebut the inference. See Commandant v. Pierce, NTSB Order EM-81, August 28, 1980. However, where a party charged with negligence responds with a showing that the presumptively blameworthy occurrence could have resulted from factors other than his alleged negligent operation, the inference is negated.<sup>2</sup> In our opinion, the appellant adequately rebutted the presumption of negligence in this case.<sup>3</sup> Appellant testified that the loss of control could have been occasioned by the helmsman's having given too much left rudder to effect two minor heading changes which had been called out to him. A witness appellant produces, a pilot also familiar with this waterway, confirmed that oversteering could have precipitated the sheer. He further testified that the abruptness of the right edge of the channel and additional shoaling in the area, not charted at the time of the incident in question, could also have caused this event. We believe this showing effectively rebutted any presumption of negligence the collision and grounding may be deemed to have initially raised.<sup>4</sup> With the presumption no

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<sup>2</sup>Although the Commandant conceded that the "presumption at issue does not survive rebuttal evidence and is not available to the trier of fact once successfully rebutted" (Brief at 5), he appears to believe that the rebuttal showing must tent to prove that the non-fault explanation in fact occurred (id. at 6). We do not share this belief.

<sup>3</sup>There is no suggestion before us that appellant's operational or command response after the loss of control was deficient in any way.

<sup>4</sup>Neither the law judge nor the Commandant addresses the matter of possible oversteering by the helmsman. Moreover, the Commandant discounts the evidence respecting the additional shoaling with his opinion that such evidence was insufficient to rebut the presumption (Comdt. Dec. at 6). Whether the Commandant believes the additional shoaling could have caused this incident is immaterial. The issue is whether the evidence that it could have rebutted the presumption. We think it did.

longer in the case, the Coast Guard was obligated to go forward with evidence, if it could, to establish that appellant's negligence caused the collision and grounding. This it failed to do.

While it may be, as the Coast Guard appears to believe, that the vessel's speed through the channel reflected a culpable disregard by appellant of the hazard of a sheer he knew or should have known existed there, we are unable to discern an evidentiary basis in the record to support that belief. The only evidence bearing on the propriety of the vessel's speed was elicited from appellant's expert witness. The law judge concluded that his testimony established that the vessel's speed, at a 70 RPM engine setting, was too fast. See I.D. at 14. We do not think that conclusion fairly reflects the testimony on the subject. As we read the record, the witness gave no opinion as to the reasonableness of transiting the area, where appellant encountered the sheer, at 70 RPM.<sup>5</sup> Moreover, his view, when asked on cross-examination, that the vessel's speed should be lowered from 70 RPM "before you get up in that area" (Tr. at 64) was based not on any expressed concern for the hazard of a sheer, but on the need to prepare for passage under the bridge, some three-quarters of a mile away, where "the bridge was much narrower to go through" and, since the bridge at some earlier time apparently had a draw span, "to be sure that the bridge was up \* \* \* (id.)."<sup>6</sup> He concluded his testimony on the point saying: "So naturally, we would be going slower in that area. But I think 60 revolution would be a good safe speed there" (id.). Whether the reference to "there" meant the area up by the bridge or near the east end of West Island is not clear from the record. What is clear is that even assuming the "there" referred to the section of channel where appellant encountered the sheer, the witness' endorsement of a 60 RPM speed as safe, with respect to positioning for passage under the bridge, obviously does not warrant a conclusion that the witness "confirmed" that 70 RPM was too fast because of the possibility of sheering.

Since we find no evidence in the record to support the charge of negligence, the Coast Guard did not meet its burden of proof, and the suspension order cannot be sustained.

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<sup>5</sup>He did, however, express the view that 70 RPM was prudent in the channel alongside West Island. See Tr. at 67-68.

<sup>6</sup>It is apparent from the witness' testimony that the bridge does not come into view until some time during the right turn around the east end of West Island.

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's appeal is granted; and
2. The three-month probationary suspension of appellant's pilot license is reversed.

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members of the Board, concurred in the above opinion and order.